

Maxim SOKOLOV, A # 96-166-622

Plaintiff,

v.

Michael CHERTOFF, in his official
capacity as Secretary of the U.S.
Department of Homeland Security,
United States Citizenship and
Immigration Services, Emilio GONZALEZ,
in his official Capacity as Director of the
U.S. Citizenship and Immigration Services,
Gerard HEINAUER in his official Capacity
as Director of the Nebraska Service Center of
the U.S. Citizenship and Immigration Services,
Ruth DOROCHOFF, in her official capacity
as Director of the Chicago District Office of
the U.S. Citizenship and Immigration Services,
& Robert S. MUELLER, III in his official capacity
as Director of the Federal Bureau of Investigation,

Defendants.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

07CV6680
JUDGE COAR
MAG. JUDGE COLE

COMPLAINT FOR
WRIT OF MANDAMUS
AND FOR DECLARATORY
RELIEF

FILED

J.N NOV 28 2007

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

INTRODUCTION

Maxim Sokolov, whose employment-based I-485 application has been pending since January of 2003, brings this petition for a writ of mandamus. Dr. Sokolov respectfully requests this court to order the Citizenship and Immigration Services ("C.I.S") to complete the processing of his application. Dr. Sokolov has contacted C.I.S. on numerous occasions to request that the agency process his application and seeks an order of mandamus only as a last resort due to C.I.S's gross inaction. C.I.S. has a clear duty to adjudicate Dr. Sokolov's application within a reasonable time, Dr. Sokolov has a clear right to a prompt decision on his case, and no other remedy is available to him. Dr. Sokolov seeks an order that C.I.S. must adjudicate his application within sixty days.

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1361 to hear this action for a writ of mandamus because defendants have a clear duty to adjudicate applications for adjustment of status. *See Iddir v. I.N.S.*, 301 F.3d 492 (7th Cir. 2002).

2. Under 28 U.S.C. §1361, “(t)he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”

3. This Court has subject matter jurisdiction to hear this action under 28 U.S.C. § 1331 because it involves a federal question under the Administrative Procedures Act, 5 U.S.C. § 555 (b), which requires that agencies conclude the matters presented to them “within a reasonable time” and “with due regard for the convenience and necessity of the parties.”

4. This Court is an appropriate venue pursuant to 28 U.S.C. § 1391 (e) because the plaintiff resides in Chicago, Illinois at 195 North Harbor Drive, Apt. 1809, defendants are officers of the United States or agencies of the United States, and no real property is involved (28 U.S.C. §1391 (e)(3)).

PARTIES

5. Plaintiff Maxim Sokolov, A # 96-166-622, is the direct beneficiary of an I-140 immigrant petition for a member of the professions holding an advanced degree or an alien of exceptional ability. His application for adjustment of status has been pending since January 21, 2003.

6. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security, which is the federal agency with authority over the United States Citizenship and Immigration Services (“C.I.S.”).

7. Defendant C.I.S. is the federal agency charged with adjudicating applications for adjustment of status. This agency was formerly part of the Immigration and Naturalization Service.

8. Defendant Emilio Gonzalez is the Director of C.I.S., which is charged with the adjudication of applications for adjustment of status.

9. Defendant Gerard Heinauer is the Director of the Nebraska Service Center of the C.I.S., which is the service center charged with adjudicating applications for adjustment of status from the state of Illinois and thereby with adjudicating Dr. Sokolov's application for adjustment of status.

10. Defendant Ruth Dorochoff is the Director of the Chicago District Office of the C.I.S., which is the local office charged with adjudicating applications for adjustment of status from Illinois and Northern Indiana.

11. Defendant Robert S. Mueller, III, is the Director of the Federal Bureau of Investigation ("F.B.I."), which is the federal agency charged with checking the names of applicants for adjustment of status to determine whether the applicants are a threat to the security of the United States.

FACTUAL ALLEGATIONS

12. Dr. Sokolov's is the beneficiary of an employment based immigrant petition (form I-140) filed by Archelon, LLC, classifying him as a member of the professions holding an advanced degree based on his PhD in Mathematics and his professional work doing Quantitative Analysis for Archelon, an international trading and market making firm. The petition was approved on April 8, 2003. (Exhibit A; I-797 Approval Notice for I-140 Petition)

13. Dr. Sokolov filed an application for adjustment of status (form I-485) concurrently with the Immigrant Petition on January 21, 2003. (Exhibit B; I-797 Notice of Receipt of I-485 Application)

14. Defendants, through Nebraska Service Center of C.I.S., acknowledged receipt of Dr. Sokolov's application for adjustment of status on January 21, 2003. (Exhibit B)

15. Dr. Sokolov is currently employed by the petitioner pursuant to valid employment authorization as their Senior US Financial Engineer. His unique expertise in mathematical modeling and algorithms has been critical to the success of Archelon, LLC. (Exhibit C, Letter from Employer) He has been a key contributor to the development of Archelon's proprietary market analysis and development of their automated market making strategies. (Exhibit C).

16.. Mr. Charles Tall, the majority owner of Archelon, LLC, and Dr. Sokolov's immediate supervisor, is located in Frankfurt, Germany. Mr. Tall would like Dr. Sokolov to make trips to Germany at least twice a year but because of the restrictions and risks associated with his immigration status, he can usually make these trips less often than necessary. The government's failure to adjudicate Dr. Sokolov's Application has significantly impeded Dr. Sokolov's ability to travel internationally, as foreign consulates are reluctant to issue travel visas to Dr. Sokolov without evidence of permanent residency. (Exhibit C).

17. The German consulate has refused to give Dr. Sokolov a visa in August 2006 because his Advance Parole documents were expiring at the end of September, which was less than the three months after the planned return date, as required by the German Consulate. (Exhibit C).

18. Due to the visa denial, Archelon, LLC forfeited the cost of the plane tickets and hotel for Dr. Sokolov's trip resulting in the financial losses of over \$7000 to Archelon, LLC. Dr. Sokolov also suffered personal financial losses of nearly \$3000 because he had planned to fly to from Frankfurt to his hometown in Russia and had already bought air tickets for that trip. (Exhibit C).

19. On several occasions, the company has asked Dr. Sokolov to accept a promotion that would require more extended visits to the Frankfurt office, but he has not been able to accept the promotion because of his pending adjustment of status application. (Exhibit C).

20. While the adjudication of the adjustment of status application for Dr. Sokolov is pending, his employer must renew his Employment Authorization and Advance Parole that results in unjustified additional costs for attorney and filing fees to Archelon, LLC.

Prior Requests for Adjudication

21. On August 17, 2004, Isabelle Proton, attorney for Dr. Sokolov, made a phone inquiry to the Nebraska Service Center of C.I.S. requesting that C.I.S. adjudicate Dr. Sokolov's petition.

22. On August 18, 2004, defendant C.I.S. notified Isabelle Proton that Dr. Sokolov's petition was still pending and that she would be notified once a decision is made.

23. On July 19, 2005, Dr. Sokolov made a phone inquiry to the Nebraska Service Center of the C.I.S. requesting that C.I.S. adjudicate his application for adjustment of status.

24. On July 20, 2005, defendant C.I.S. notified Dr. Sokolov that he would be notified if C.I.S. needed any additional information in order to process his case. To this date, defendants have not requested additional information from Dr. Sokolov.

25. On August 4, 2005, Archelon LLC, requested Senators Richard Durbin and Barack Obama to make an inquiry to the Nebraska Service Center of the C.I.S. about the status of Dr. Sokolov's application for adjustment of status.

26. On October 31, 2005, Senator Richard Durbin made a second inquiry to the Nebraska Service Center of the C.I.S. about the status of Dr. Sokolov's application.

27. On November 17, 2005, defendant Nebraska Service Center of the C.I.S. responded to Senator Durbin's inquiry and acknowledged that the fingerprints of Dr. Sokolov were current but all facets of the security review process had not been completed.

28. On December 1, 2005, Dr. Sokolov made a phone inquiry to the Nebraska Service center of the C.I.S. and on December 12, 2005, C.I.S. notified him that his application was still pending.

29. On June 15, 2006, defendant C.I.S. responded to Isabelle Proton's inquiry to the quality control department of C.I.S. about Dr. Sokolov's application. In this response, defendant, Gregory Christian, Acting Director of C.I.S., told Isabelle that Dr. Sokolov's F.B.I. security checks were pending. The Acting Director asked Isabelle Proton to contact the C.I.S. if no decision was made within six months.

30. On November 23, 2006, Dr. Sokolov made an Expedited Processing Request to the defendant Nebraska Service Center of the C.I.S. In this request Dr. Sokolov indicated that after a phone inquiry to the C.I.S., he was told that his case was pending due to the F.B.I. security checks.

31. On November 24, 2006, defendant Director of C.I.S., Gerard Heinauer, responded to Dr. Sokolov's Expedited Processing Request. In this response, defendant Director told Dr. Sokolov that his application was pending because of F.B.I. security checks.

32. On November 18, 2006, Dr. Sokolov made a Freedom of Information-Privacy Acts (FOIPA) request to the FBI.

33. On January 8, 2007, defendant F.B.I. responded to Dr. Sokolov's FOIPA request. In this response, defendant F.B.I. indicated that there were no matching records in the central records system at F.B.I. Headquarters that matched Dr. Sokolov's FOIPA request.

34. On November 18, 2006, Dr. Sokolov sent an email to the F.B.I. to inquire about the status of his F.B.I. name check.

35. Defendant F.B.I. has not processed Dr. Sokolov's name checks even though it has had over four and one half years in which to do so.

36. On October 22, 2007, Dr. Sokolov attended an Infopass appointment at the Chicago District Office of C.I.S. At this appointment he was told his application is still pending because of the delay of his name check with the F.B.I.

CAUSE OF ACTION

37. Defendants owe plaintiff a duty of adjudicating his application for adjustment of status within a reasonable time. *See* Administrative Procedures Act, 5 U.S.C. § 551 et seq.

38. Plaintiff has a clear right to the adjudication of his properly submitted application for adjustment of status.

39. Defendants are violating their mandatory duty by failing to adjudicate Dr. Sokolov's application for adjustment of status within a reasonable time after they received Dr. Sokolov's properly filed documents.

40. Defendant C.I.S. is violating its duty to adjudicate plaintiff's application because it has failed to obtain a timely response to its request for a security name check from the F.B.I.

41. Defendant F.B.I. is violating its duty as the agency charged with performing security name checks within a reasonable time.

42. Plaintiff has no further administrative options with which to obtain adjudication of his application.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully requests that this Court:

a. Declare, as permitted by 28 U.S.C. 2201 and 2202 and Federal Rule of Civil Procedure 57, that three years is an unreasonable time to delay processing of a national security name check.

b. Declare that three years is an unreasonable time to delay processing of an application for an adjustment of status where no further information is required from the applicant and the applicant has complied with all requests for information.

c. Order defendants to adjudicate Dr. Sokolov's application for adjustment of status within sixty days of this Court's decision, as permitted by 28 U.S.C. § 1361.

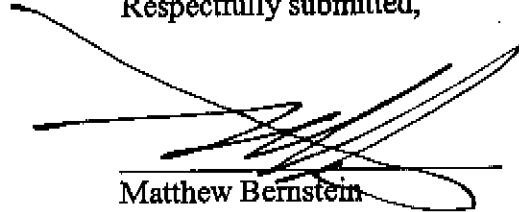
d. Award attorney's fees to plaintiff, as permitted by 28 U.S.C. §2412 (d) (1) (A).

e. Grant such other relief as this Court may deem just and proper, pursuant to 28 U.S.C.

§ 2202.

Dated: November 26, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew Bernstein', is written over a horizontal line. The signature is stylized with a large, sweeping flourish that extends to the right.

Matthew Bernstein
Illinois I.D. #6217485
Attorney for Plaintiff
Law Office of Chicago-Kent College of Law
565 West Adams Street
Suite 600
Chicago, IL 60661
(312) 906-5047

LIST OF EXHIBITS

EXHIBIT A: I-797 Approval Notice for I-140 Petition

EXHIBIT B: I-797 Notice of Receipt of I-485 Application

EXHIBIT C: Letter from Employer

EXHIBIT A

UNITED STATES OF AMERICA

RECEIPT NUMBER LIN-03-088-53404		CASE NUMBER 1140	
RECEIPT DATE January 23, 2003		PRIORITY DATE May 20, 2002	
NOTICE DATE April 8, 2003		PAGE 1 of 1	
PETITIONER ARCHELON LLC		BENEFICIARY A96-166 622 SOKOLOV, MAXIM V.	
ARCHELON LLC C/O JUDY L FRUSHOUR DIRECTOR HR 200 S WACKER DRIVE 24TH FLOOR CHICAGO IL 60606		Notice Type: Approval Notice Section: Mem of Profession w/Adv Deg, or of Excepth'l Ability Sec. 203(b)(2)	

Courtesy Copy: Original sent to: PROTON, ISABELLE M

This courtesy notice is to advise you of action taken on this case. The official notice has been mailed to the attorney or representative indicated above. Any relevant documentation included in the notice was also mailed as part of the official notice.

The above petition has been approved. The petition indicates that the person for whom you are petitioning is in the United States and will apply for adjustment of status. He or she should contact the local INS office to obtain Form I-485, Application for Permanent Residence. A copy of this notice should be submitted with the application, with appropriate fee, to this Service Center. Additional information about eligibility for adjustment of status may be obtained from the local INS office serving the area where he or she lives, or by calling 1-800-375-5283.

If the person for whom you are petitioning decides to apply for a visa outside the United States based on this petition, the petitioner should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center (NVC).

The NVC processes all approved immigrant visa petitions that require consular action. The NVC also determines which consular post is the appropriate consulate to complete visa processing. It will then forward the approved petition to that consulate.

This courtesy copy may not be used in lieu of official notification to demonstrate the filing or processing action taken on this case.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER
U. S. IMMIG. & NATZ. SERVICE
P.O. BOX 82521
LINCOLN NE 68501-2521
Customer Service Telephone: 402-323-7830



EXHIBIT B

UNITED STATES OF AMERICA			
RECEIPT NUMBER LIN-03-088-53416		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS	
RECEIVED DATE January 21, 2003	PRIORITY DATE	APPLICANT A96 166 622 SOKOLOV, MAXIM V.	
NOTICE DATE January 23, 2003	PAGE 1 of 1		
ISABELLE M. PROTON ISABELLE M. PROTON PC ATTY AT LAW 1821 WALDEN OFFICE SQUARE STE 400 SCHAUMBURG IL 60173-4273		Notice Type: Receipt Notice Amount received: \$ 305.00 Section: Adjustment as direct beneficiary of immigrant petition	

The above application or petition has been received. It usually takes 450 to 480 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number 402-323-7830 to obtain case status information direct from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).

If you have other questions about possible immigration benefits and services, filing information, or Immigration and Naturalization Service forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call our TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit the INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER
U. S. IMMIG. & NATZ. SERVICE
P.O. BOX 82521

LINCOLN NE 68501-2521
Customer Service Telephone: 402-323-7830



EXHIBIT C

ARCHELON

LLC

November 5, 2007

To whom it may concern.

Our company Archelon LLC, is sponsoring Dr. Maxim Valeryevich Sokolov for a Green Card as we are in need of his permanent services.

We have completed the I-485 application for permanent residence (employment based) for Dr. Sokolov. His case number is LIN-03-088-53416. It was filed with the Nebraska Service Center on January 21, 2003. It has been over four years and ten months since that day, but our case has not been completed, yet it appears applications that have been filed after ours are being completed. We have already inquired to the USCIS regarding the status of the applications. The response received was generic and non-helpful.

Archelon is an electronic market maker and proprietary trader of exchange listed options, futures and equities in the US, Europe, and Korea, operating from offices in Chicago, Illinois, and Frankfurt, Germany, and providing employment to several dozen American citizens.

The core of our business is our technology, proprietary trading algorithms, efficient data dissemination and expert personnel. Since he began working for our firm in 2000, Dr. Sokolov's unique expertise in mathematical modeling and algorithms has been critical to our success. His current position is Senior US Financial Engineer. He supervises our US Financial Engineer department, consisting of three full-time and two part-time employees. He has been a key contributor to the development of our proprietary market analysis and the development of our automated market making strategies. During this period of increased market volatility around the globe, Dr. Sokolov's ability to continue working for us and his ability to travel in an unrestricted manner to consult with and advise our overseas affiliates and clients is critical to our mission.

There are many direct and indirect expenses for Archelon that are associated with such a long processing time for Dr. Sokolov's Green Card. Dr. Sokolov's position requires him to travel on business trips to our Frankfurt office at least twice every year. The current uncertain immigration status makes these travels very hard to arrange. The only way he can travel internationally is on USCIS Advance Parole, which is valid for one year. In practice, this makes it useful for less than nine months in a year, because the German Consulate would not grant a visa to Germany if the travel documents for reentering the US are valid for less than three months after the planned return date. Thus, in August of 2006 Dr. Sokolov was denied a German visa because the Advance Parole was expiring at the end of September. At that time Archelon had already purchased tickets to Frankfurt and paid for a hotel for Dr. Sokolov and another Archelon financial engineer that works

with him. The trip had to be cancelled, resulting in over \$7,000 of only direct costs to the company. On another occasion, in March of 2003, the company had to interrupt Dr. Sokolov's Frankfurt visit and fly him home for a few days and then again back to Frankfurt in emergency, because our attorney received a Fingerprint Appointment from USCIS that Dr. Sokolov had to attend on one of those days. Every year Archelon pays filling and attorney fees measuring in thousands of dollars for Employment Authorization and Advance Parole documents for Dr. Sokolov and his wife. On top of all above mentioned expenses and inconveniences, the restricted immigration status severely limits Dr. Sokolov's professional growth opportunities and Archelon's ability to employ him in the most appropriate role. On several occasions the firm's management asked Dr. Sokolov to accept a promotion that would require more extended visits to our Frankfurt office, but until Dr. Sokolov becomes a Permanent Resident, these plans will need to be postponed.

Please contact me should you have any questions. We would appreciate any assistance that can be provided in this matter.

Sincerely,



Megan Loutfi
Human Resources Manager
(312) 788-6380